IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1610 of 2007()

CC.1085/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI

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PETITIONER: ACCUSED NO.5

ABDUL KAREEM, S/O.ABOOBACKER,
THACHAPARAMBAN HOUSE, CHEROOR, VENGARA,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED
BY THE SUB INSPECTOR OF POLICE, THIROORANGADI
POLICE STATION-THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.C.K. SURESH.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1610 OF 2007

Dated this the 29th day of May, 2007

ORDER

The petitioner is one of the accused in a prosecution for the offences punishable, inter alia, under Secs.341 and 323 read with Sec.149 of the IPC. The petitioner is allegedly one of the 7 persons who faced the prosecution. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. He was not available in India on the date of occurrence. His passport vouches for such absence of his in India at the relevant time. He has been unnecessarily arrayed as an accused. The petitioner was not available for trial. Some of his co-accused have already been tried and acquitted. The petitioner, in these circumstances, has come to this Court with a prayer that powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings against the petitioner. The petitioner is at the moment employed abroad.

Continuance of the prosecution is causing the petitioner great prejudice, hardship and loss, submits counsel.

2. I am afraid that neither of the two grounds urged are sufficient to justify the prayer for quashing of the proceedings by invoking the jurisdiction under Sec.482 of the Cr.P.C. That the passport shows that the petitioner was available abroad may be an indication but not, at any rate, sufficient at this stage to resort to the extraordinary course of quashing the proceedings accepting such plea of absence. So far as the acquittal of the co-accused is concerned, the dictum in **Moosa v. Sub Inspector of Police** (2006 (1) KLT 552) clearly shows that the mere acquittal of the co-accused is no justifiable reason for the absconding co-accused to claim quashing of proceedings. To a pointed query put by this Court, it is fairly stated by the learned counsel for the petitioner that in the trial against the co-accused the presence or otherwise of the petitioner was not an issue and was not spoken to by the victim or any other witness. In these circumstances, the prayer for quashing of the proceedings cannot be accepted.

3. The learned counsel for the petitioner undaunted submits that, at any rate, charges are now liable to be framed

only for the compoundable offences with the aid of Sec.34. The petitioner cannot personally appear now. He may be permitted to appear through his counsel and advance that plea and if charges are framed only for the compoundable offences, the petitioner may be permitted to report composition of the offences alleged by the de facto complainant/victim. I find merit in that submission. Appropriate directions safeguarding the interests of the petitioner can be issued.

4. In the result, this petition is allowed in part. The petitioner may appear through counsel before the learned Magistrate and seek exemption from personal appearance till the question of charges and composition is considered. The learned Magistrate shall consider the contention of the petitioner that charges are liable to be framed only for compoundable offences and that such offences have been compounded by the victim. Appropriate orders shall be passed by the learned Magistrate in the matter.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge